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HUMAN RIGHTS COMMITTEE

Forty-sixth session

SUMMARY RECORD OF THE 1195th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 30 October 1992, at 10 a.m.

Chairman: Mr. POCAR

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The meeting was called to order at 10.20 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Second periodic report of the Islamic Republic of Iran (CCPR/C/28/Add.15) (continued)

1. Mr. MEHRPOUR (Islamic Republic of Iran), continuing his replies to questions raised by Committee members in connection with section I of the list of issues, noted that several questions had been asked about the Administrative Justice Tribunal (paras. 18-20 of the report). The Tribunal had been established, in accordance with article 173 of the Constitution, under the supervision of the head of the judicial power, and also came within the purview of the Ministry of Justice. The Tribunal's functions, as outlined in article 173 of the Constitution, were to investigate complaints, grievances and objections with respect to government officials, organs and statutes. Article 170 of the Constitution specified, furthermore, that anyone had the right to apply to the Administrative Justice Tribunal for the annulment of any statute or regulation of the Government that was in conflict with the laws or the norms of Islam, or lay outside the competence of the executive power.

2. A related question raised by members of the Committee was whether the Islamic Republic of Iran had an institution similar to the constitutional courts which existed in other countries. The Guardian Council might be said to bear some similarities to, for example, the Constitutional Council in France, but there were important differences. All legislation proposed by the Majles was automatically submitted to the Guardian Council for verification of constitutionality. That procedure, moreover, was not contingent upon any request from a member of Parliament, the Government or the President. If the Guardian Council approved the legislative proposals of the Majles as being consistent with the Constitution, they then became law; otherwise, they would be returned to the Majles for redrafting. No other such body was vested with power to make its own judgements on constitutional issues.

3. Different procedures applied to regulatory instruments issued by the Government or individual ministries to ensure enforcement of the law and the proper functioning of the administrative apparatus of the State. Such instruments, of course, had a different status, and verification of the fact that they were not in conflict with the laws or the norms of Islam or lay outside the competence of the executive power might be done in one of two ways: through their submission to the President or Speaker of Parliament, or through their referral to the Administrative Justice Tribunal. More generally, administrative decisions could be appealed against to the appropriate administrative board or commission. For example, a person who considered himself to have been wrongfully dismissed from a government post could apply to such an appeals board or, in last resort, to the Administrative Justice Tribunal, to have his grievances heard. The administrative justice bodies dealt with a wide variety of cases, ranging from violations of building codes to disputes concerning social security entitlements. Rulings of the Administrative Justice Tribunal were published in special pamphlets or in the official gazette. Several examples of cases in which administrative decisions had been struck down were mentioned in the report. Lastly, judges were

appointed to the Administrative Justice Tribunal on the basis of their qualifications and experience: generally, 10 to 15 years' experience in the administration of justice was required.

4. Another question raised by the Committee concerned amnesty provisions. The basis for the granting of amnesty was article 110 (11) of the Constitution, which provided for pardoning or reducing the sentences of persons convicted of offences, within the framework of Islamic criteria and on a recommendation from the head of the judicial power. That could be done through a general amnesty, for which legislation was enacted, or on a case-by-case basis following a periodic review of the list of convicted persons recommended for pardon or commutation of their sentences. The procedure was that favourable recommendations would be made, on the basis of good behaviour and other criteria, by the prison authorities or assistant public prosecutor to the head of the judicial power, who would in turn make his own recommendations to the Leader of the country. Amnesty decisions were usually published to coincide with religious or other public holidays. A special statute issued in A.H.1369 set out the conditions for the granting of amnesty and stated specifically that it could also be granted in capital cases, where a stay of execution was allowed until such time as the case was examined and a decision reached.

5. Mr. Lallah had asked a question concerning the provision of article 171 of the Constitution whereby a judge must make reparation for moral or material loss resulting from default or error on his part (para. 19 of the report). Such matters generally came within the scope of the law on civil responsibility which had been in force for some 30 years. There was, of course, considerable debate in legal circles concerning the theory of fault and culpability, the risks involved particularly in exercising the professions of judge or physician, and so on. In that regard, he would welcome further comments from Committee members. However, the essential point was that if the judge had not been impartial or had acted negligently or in breach of the law, he was bound to be held responsible for his wrongdoing and liable for any damage inflicted as a consequence. On the other hand, there could be no question of a judge being held responsible for a wrong assessment when he had performed his duties honestly in accordance with the law; and certainly he could not be held responsible for making a wrong judgement based on evidence that later proved to be false. In such cases, the Government could make arrangements to compensate loss suffered by the aggrieved party and to restore his honour and dignity.

6. Concerning the role of the clergy in the judiciary, he had explained earlier that judges were appointed having regard to their qualifications and experience, as well as their learning and moral and personal qualities, to serve within a legal system that was, of course, based on the principles of Islam, which could be termed the "mother law". Since the Revolution, members of the clergy has been able to act as judges if they were qualified and had received professional training. Courses were held regularly to familiarize judges with developments in the legal field.

7. Mr. Herndl had expressed concern that some confusion might result from the effects of article 4 of the Constitution, which stated that all laws and regulations must be based on Islamic criteria. That article had to be seen as

the foundation for the drafting and enactment of laws - a process that, as he had also already explained, was overseen by the Guardian Council. Once legislation proposed by the Majles had been examined and approved by the Council, it became law and served as the basis for decisions and rulings of the courts at all levels. That procedure, therefore, served as a safeguard to ensure that there was no confusion or ambiguity in the application of the law in the Islamic Republic of Iran.

8. With regard to comments concerning alleged discrimination against women, he referred to article 21 of the Constitution, which required the Government to ensure the rights of women in all respects; to create a favourable environment for the growth of women's personality and the restoration of their rights; to protect mothers, particularly during pregnancy and child-rearing; to establish competent courts in order to protect and preserve the family; and to provide special insurance for widows, elderly women and women without support. It was therefore untrue to say that there was any desire to discriminate against women. There had admittedly been some discrimination in the past, but that had been true of European countries also. During the ILO Conference at Geneva in 1991, there had been a women's demonstration in which participants had complained that women's rights were still unrealized 10 years after the approval of an article in the Swiss Constitution had provided for their recognition. The fact that the United Nations continued to pass resolutions and to adopt conventions on the subject proved that there were still difficulties in that regard in many countries.

9. Some distinctions had to be made between men and women since they differed by nature. Only women could bear children, and the law had to make some special provision for them. Under Iranian law they were given longer holidays than men and the kind of work they performed had to take account of their welfare. The Iranian Labour Law specified that women must receive the same pay as men for work of equal value and established many rules aimed at improving the welfare and status of women. Article 75 prohibited the performance of heavy manual work by women, while article 76 provided for a period of 90 days of maternity leave, following which the mother could return to her previous employment.

10. Some members of the Committee had complained of a lack of statistics in that area, but he had, in fact, provided some figures the previous day and had explained that no distinction was made as between men and women with respect to the literacy campaign and the opportunities for entry to university. Every effort was being made to eradicate illiteracy without distinction between the sexes, through campaigns in rural areas and in factories and elsewhere, and films and television programmes were used to illustrate its disadvantages. Women were among the leading university students in engineering and medicine. The claim that 89 per cent of Iranian women were illiterate and that girls' schools in rural areas had been closed down for lack of women teachers was entirely erroneous. The majority of teachers were women, who were extremely active in education. It had also been alleged that women took no part in sports organizations. In fact, in 1991, 300,000 women and girls had been members of various sports committees. Women participated in international sporting events and a number of them had recently competed successfully in target-shooting in China.

11. A number of speakers had raised the question of posts in the judiciary, which they had understood could not be held by women. Historically, most posts all over the world had been occupied by men. Of 18 members of the Human Rights Committee, only two were women. Islamic theologians had declared women ineligible for investigating cases or rendering judgements either in civil or in criminal cases, and that rule was applied throughout the Islamic world. Properly qualified men or women could, however, be occupied on an equal footing in other judicial posts. Such officials, too, were known as judges and received a salary appropriate to their position. They might, for example, occupy such posts as assistant prosecutor or adviser either in civil or in criminal courts. The need to employ more women in various positions in the judicial branch had been recognized by the President of the Judiciary and by the Faculty of Law, which was known as the Faculty of Judicial Sciences and was related to the judicial power. It had been intended to admit women to the Faculty during the current year, but since the entrance examination date had passed, that would probably be done in 1993. Measures to increase the number of women in the judiciary were being investigated, and it was anticipated that an announcement would be made early in 1993 inviting women to apply for posts in that branch.

12. Mr. Herndl and other speakers had raised the question of discrimination between men and women in such matters as divorce and inheritance. In considering those questions, the entire legal and judicial system as applied to men and women should be taken into account. It had been claimed that the fact that the woman's share of the inheritance was only half that of the man constituted discrimination and meant that women were considered of less worth than men. The differences between the Islamic system and European systems, for example, should be taken into account. There was no Islamic country that would consider such a distinction to be discriminatory. Men in such countries had to provide their wives with dowries on marriage and the dowry became the woman's property. Throughout the marriage, the man bore all the household expenses and the expenses of the wife and children. Even if a woman had her own property or income she was not obliged to contribute. Article 1018 of the Civil Code gave women full independence in their financial affairs and full control over their property. The time when women had been considered subject to their husbands in such affairs had now passed. In view of all those considerations, the fact that the woman's share of the inheritance was only half that of the man could not be regarded as discriminatory.

13. On the question of divorce, it had been traditional under the Islamic system for the man to decide on any such move, but he could only do so for good reason. There was now a special civil court, established under article 21 of the Constitution, in which a divorce petition could be brought either by the husband or by the wife. Without the court's authorization, no notary public could register a divorce on behalf of either partner; if he did so, he would be disciplined.

14. A number of speakers had raised the question of possible religious discrimination and asked why the Constitution recognized some minority religions but not others. They had placed particular emphasis on the situation of the Baha'is. The Zoroastrian, Christian and Jewish faiths were recognized as religions because they were divine religions with their own holy books. The Qur'an recognized Moses and Jesus as great prophets and paid

respect to them, and the Islamic religion was considered as a completion of those divine religions. The religion of most Iranians was Islam, which they had accepted as a basis for their society and system of government, but the other valid religions had been given due recognition under the Constitution, and their followers were granted certain advantages. Although all Iranian citizens were covered by the provisions of the Penal Code and the Civil Code, practitioners of Christianity, Judaism and Zoroastrianism were entitled to apply the rules of their own religion in their personal affairs. The Constitution further stipulated that there must be one Jewish, one Zoroastrian and three Christian representatives in Parliament, despite the fact that such religions had only a small following.

15. As to why the Baha'is had not been accorded the same advantages as practitioners of other religions, he said it would be impractical to extend such advantages indiscriminately. Certain standards must be applied, and those included the number of followers and the force and impact of the religious tradition. It was not only the Baha'is, but also practitioners of a great many other faiths that were not given special advantages under the Constitution. The emergence of the Baha'i faith nearly 150 years previously had been accompanied by serious social conflict, violence and death. That historical background, and the fact that the Baha'is presented their faith as the exclusive gateway to God, accounted for the intensity of the reaction among the country's Muslim population to the proselytizing efforts of members of the Baha'i faith. Nevertheless, the Government and the judiciary always endeavoured to defuse confrontation and preserve the rights of the Baha'is. There was even a body of case law on the Baha'is, demonstrating that their rights were being defended in the courts. They came under civil law as did all other citizens: their children could attend school, they were entitled to inherit and they were able to take claims to court if they so desired.

16. A complex issue had been raised by Mr. Aguilar Urbina and others in relation to article 14 of the Constitution, which provided for just and equitable treatment of non-Muslims as long as the individuals in question had not committed conspiracy against the Islamic Republic of Iran. A conspiracy was defined as the actions of a group of individuals who wished to destroy the Government. Yet if the members of the Committee interpreted article 14 of the Constitution as meaning that such individuals did not enjoy human rights, they were wrong. Even when an individual had committed an offence like that of conspiracy, his human rights were preserved. As a member of the Guardian Council, he could now see that there might be some ambiguity with the interpretation of article 14, and he would bring that matter up in the Council.

17. A number of speakers had alluded to the fact that the blood-money for a woman was only half that for a man, which in their view indicated that women were accorded lesser worth than men. The Qur'an, which was the basis for the Islamic system of administration and justice, made no distinction whatsoever regarding the worth of women or men. Since the man was the head of the household and the provider of financial resources for the family, however, it was only logical and practical that his price in blood-money should be higher than that of the woman. That arrangement was in no way intended to downgrade the inherent worth of women.

18. Mr. Ando had raised a question about the civil liability of government employees. According to the relevant legislation, when, in the performance of his functions, a civil servant inflicted damage through his own negligence, he incurred liability. If on the other hand, the damage was caused by a lack of proper facilities - tools, equipment, infrastructure, etc. - the Government was liable for damages.

19. A question had been raised on military courts and their competence. The military courts had jurisdiction exclusively in relation to the activities of members of the armed forces linked to their military duties. Claims under civil law against members of the armed forces were taken up in the ordinary courts. As for appeals against decisions of the military courts, there was a hierarchy under which the decisions of Military 2 Courts could be appealed in Military 1 Courts, and those of Military 1 Courts in the Supreme Court.

20. Mr. Ando and others had asked for clarification about permanent and temporary marriages and whether there were differences between the rights of men and women in such circumstances. The majority of marriages in the Islamic Republic of Iran were contracted on a permanent basis. But there was also a provision for temporary marriage contracts, which were arranged by mutual consent for a specific time period. The rules that applied to permanent marriages also applied to temporary marriage contracts. The philosophy underlying the institution of the temporary marriage contract was that since a permanent contract required the commitment of resources that were perhaps beyond the means of young people, a temporary contract would enable such individuals to legitimize their situation even before they had acquired the necessary means. In a permanent marriage, a husband must provide for all the expenses of his wife. In temporary marriages, however, the husband paid a dowry but was not obliged to meet all the living expenses of the wife, the apportionment of expenses being left entirely to the discretion of the spouses. A child born during a temporary marriage contract was recognized as legitimate. However, upon the expiry of a given temporary marriage contract, a woman must wait for a specified period of time before entering into a new temporary marriage contract, the purpose being to ensure that there would be no question of illegitimacy.

21. Mr. Prado Vallejo had raised a question about the strict dress code for women. He had already explained that his country's society and the upbringing of its citizens were different from those of European countries. The rules regarding dress and conduct reflected and were intended to ensure respect for the country's traditions and religious beliefs. There was no intention of repressing or penalizing women. A parallel could be drawn with the regulations against indecent exposure in a number of countries of Europe and the Americas. The ultimate purpose of the regulations was to preserve social order.

The meeting was suspended at 12.10 p.m. and resumed at 12.30 p.m.

22. Mr. MEHRPOUR (Islamic Republic of Iran), continuing his replies to the questions put by members, said that judgements handed down by secular and non-secular courts had the same legal effects.

23. With regard to the possibility of appealing against a judgement, he said that an appeal could be made where a complainant considered the judgement to be incorrect. In addition, where the judge who had presided over the trial subsequently found that his judgement had not been correct, he could appeal against his own judgement.

24. With regard to non-Muslims who belonged to no religion or to no recognized religion, Islam adopted a policy of tolerance and patience, although naturally a person who had committed an offence would be subject to the relevant laws. Islam stressed that the opposition must be heard.

25. He had stressed the great importance of the right to life and wished to point out that, as stated in the Qur'an, if someone took the life of another person without reason, it was as though he had killed all humanity. It had been asked why there were so many executions in his country if that was so. In that connection, he said that the status of a murderer was different. However, it must be noted that the abolition of capital punishment was a question that was being debated throughout the world. Many countries supported its retention, considering that it was beneficial and protected society. The latter view had been accepted by Islam and it was believed that other remedies would not be capable of preventing serious offences. Furthermore, the Qur'an stated that retribution ensured the life of others. In principle, he thought that capital punishment was to be deplored and he wished that it did not exist, but his country believed in capital punishment for persons who had been found guilty of heinous crimes. Islam was a compassionate religion. While it provided that someone whose close relative had been killed had the right to request capital punishment, it also said that it would be better to forgive. Forgiveness was encouraged and executions must be kept to the minimum.

26. In reply to a question by Mr. Wennergren, he said that it was sometimes possible for a court to be constituted under a special law but that there were no ad hoc courts that were outside the powers of the judiciary. Circuit courts were designed to facilitate the affairs of people who lived far from a provincial capital or major town. They dealt with small claims. Where it was felt that local judges were unable to investigate complicated crimes, the law authorized the head of the judiciary to appoint other judges to examine such cases.

27. Under the law, persons who had worked for the Ministry of Justice or civil servants could become judges. Where they had not been employed by the Ministry of Justice but were otherwise qualified to dispense justice, they could do so in respect of certain cases. In that regard, he said that the High Council of the Judiciary was authorized to appoint persons with judicial qualifications and send them to any part of the country. Their powers were set forth in their letters of appointment. Disciplinary action would be taken against them if they committed violations.

The meeting rose at 1.05 p.m.